

§ 407.9

7 CFR Ch. IV (1–1–06 Edition)

§ 407.9 Group risk plan common policy.

The provisions of the Group Risk Plan Common Policy for the 2005 and succeeding crop years are as follows:

[FCIC policies]

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Group Risk Plan Common Policy

[Reinsured policies]

(Appropriate title for insurance provider)
(This is a continuous policy. Refer to Section 18.)

[FCIC policies]

This insurance policy establishes a risk management program developed by the Federal Crop Insurance Corporation (FCIC), an agency of the United States Government, under the authority of the Federal Crop Insurance Act (Act), as amended (7 U.S.C. 1501 *et seq.*). All terms of the policy and rights and responsibilities of the parties thereto are subject to the Act and all regulations under the Act published in 7 CFR chapter IV. The provisions of this policy may not be waived or modified in any way by us, your insurance agent or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. Procedures (handbooks, manuals, memoranda, and bulletins), issued by us and published on the RMA Web site at <http://www.rma.usda.gov/> or a successor Web site will be used in the administration of this policy. All provisions of state and local laws in conflict with the provisions of this policy as published at 7 CFR part 407 are preempted and the provisions of this policy control.

Throughout this policy, “you” and “your” refer to the person shown on the accepted application and “we,” “us,” and “our” refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, the use of the plural form of a word includes the singular use and the singular form of the word includes the plural.

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures issued by us, the order of priority is as follows: (1) The Act; (2) the regulations; and (3) the procedures issued by us, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 407 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 407 control. If a conflict exists among the policy provisions, the order of pri-

ority is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), etc.

[Reinsured policies]

This insurance policy establishes a risk management program developed by the Federal Crop Insurance Corporation (FCIC), an agency of the United States Government, under the authority of the Federal Crop Insurance Act (Act), as amended (7 U.S.C. 1501 *et seq.*).

This insurance policy is reinsured by FCIC under the provisions of the Act. All terms of the policy and rights and responsibilities of the parties are subject to the Act and all regulations under the Act published in 7 CFR chapter IV. The provisions of this policy may not be waived or modified in any way by us, our insurance agent or any other contractor or employee of ours or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. We will use the procedures (handbooks, manuals, memoranda, and bulletins), as issued by FCIC and published on the RMA Web site at <http://www.rma.usda.gov/> or a successor Web site, in the administration of this policy. All provisions of state and local laws in conflict with the provisions of this policy as published at 7 CFR part 407 are preempted and the provisions of this policy will control. In the event that we cannot pay your loss because we are insolvent or are otherwise unable to perform our duties under our reinsurance agreement with FCIC, your claim will be settled in accordance with the provisions of this policy and FCIC will be responsible for any amounts owed. No state guarantee fund will be liable for your loss.

Throughout this policy, “you” and “your” refer to the person shown on the accepted application and “we,” “us,” and “our” refer to the reinsured company issuing this policy. Unless the context indicates otherwise, the use of the plural form of a word includes the singular use and the singular form of the word includes the plural.

AGREEMENT TO INSURE: In return for the payment of premium and subject to all of the provisions of this policy, we agree with you to provide risk protection as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is as follows: (1) The Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 407 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 407 control. If a conflict exists among the policy provisions, the order of priority is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the

Federal Crop Insurance Corporation, USDA

§ 407.9

Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), etc.

[Both policies]

The Group Risk Plan of Insurance (GRP) is designed as a risk management tool to insure against widespread loss of production of the insured crop in a county. It is primarily intended for use by those producers whose farm yields tend to follow the average county yield. It is possible for you to have a low yield on the acreage that you insure and still not receive a payment under this plan.

For additional coverage you may select any percent coverage level shown on the actuarial documents. Multiplying your coverage level percent by the expected county yield shown on the actuarial documents gives your trigger yield. If the payment yield that FCIC publishes for the insured crop year falls below your trigger yield, you will receive a payment.

On or before the sales closing date, you may select any dollar amount of protection between 60 and 100 percent (except for Catastrophic Risk Protection (CAT) which is 45 percent) of the maximum protection per acre shown on the actuarial documents. This protection will be provided for each acre of the crop planted by the acreage reporting date and shown on your acreage report (unless otherwise provided in the crop provisions) in which you have a share.

In accordance with the Act, FCIC will pay a portion of your premium, as published in the actuarial documents. The premium rates, practices, types, maximum protection per acre, and maximum subsidy per acre are also shown on the actuarial documents.

FCIC will issue the payment yield in the calendar year following the crop year insured. This yield will be the official estimated yield published by the National Agricultural Statistics Service (NASS). You will be paid if the payment yield falls below your trigger yield. The amount of your payment per net insured acre will be calculated by subtracting the payment yield from the trigger yield, dividing that quantity by the trigger yield, and multiplying that result by your protection per acre for each net acre that you have insured.

To be eligible to participate in the Group Risk Plan of Insurance for any crop in any county, and to receive an indemnity thereunder, you must have an insurable interest in an insured crop that is planted in the county shown on the approved application. The crop must be planted for harvest and be reported to us by the acreage reporting date. You may only purchase coverage under the Group Risk Plan of Insurance on your net acres of the insured crop.

The insurance contract shall become effective upon the acceptance by us of a duly executed application for insurance on our form. The policy will consist of the accepted appli-

cation, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable amendments, endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Insurance for each agricultural commodity in each county will constitute a separate policy.

Terms and Conditions

Group Risk Plan of Insurance Basic Provisions

1. Definitions

Acreage report. A report required by section 7 of these Basic Provisions that contains, in addition to other information, your report of your share of all acreage of an insured crop in the county, whether insurable or not insurable.

Acreage reporting date. The date contained in the Special Provisions by which you must submit your acreage report in order to be eligible for Group Risk Insurance.

Act. Federal Crop Insurance Act, (7 U.S.C. 1501 *et seq.*).

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office and published on RMA's Web site at <http://www.rma.usda.gov/> or a successor Web site, and which shows the maximum protection per acre, expected county yield, coverage levels, information needed to determine the premium rates, practices, program dates, and other related information regarding crop insurance in the county.

Additional coverage. For GRP, an amount of protection greater than catastrophic risk protection. The protection is on a per acre basis as specified in the actuarial documents for the crop, practice, and type.

Agricultural commodity. Any crop or other commodity produced, regardless of whether or not it is insurable.

Agricultural experts. Persons who are employed by the Cooperative State Research, Education and Extension Service or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

Area. Land surrounding the insured acreage with geographic characteristics, topography, soil types and climatic conditions similar to the insured acreage.

Billing date. The date, contained in the actuarial documents, by which we will bill you for the premium and administrative fee on the insured crop.

Cancellation date. The calendar date specified in the Crop Provisions on which insurance for the next crop year will automatically renew unless the policy is canceled in

writing by either you or us or terminated in accordance with policy terms.

Catastrophic risk protection. The minimum level of coverage offered by FCIC. For GRP, an amount of protection equal to 65 percent of the expected county yield indemnified at 45 percent of the maximum protection per acre specified in the actuarial documents for the crop, practice, and type.

County. Any county, parish, or other political subdivision of a state shown on your accepted application.

Certifying agent. A private or governmental entity accredited by the USDA Secretary of Agriculture for the purpose of certifying a production, processing or handling operation as organic.

Code of Federal Regulations (CFR). The codification of general and permanent rules published in the FEDERAL REGISTER by the Executive departments and agencies of the Federal Government. Rules published in the FEDERAL REGISTER by FCIC are contained in 7 CFR chapter IV. The full text of the CFR is available in electronic format at <http://www.access.gpo.gov/> or a successor Web site.

Contract change date. The calendar date by which changes to the policy, if any, will be made available in accordance with section 19 of these Basic Provisions.

Conventional farming practice. A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop that may be, but is not required to be, generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other reasons related to conservation or soil improvement. A cover crop may be considered to be a second crop (see the definition of "second crop").

Crop practice. The combination of inputs such as fertilizer, herbicide, and pesticide, and operations such as planting, cultivation, and irrigation, used to produce the insured crop. The insurable practices are contained in the actuarial documents.

Crop Provisions. The part of the policy that contains the specific provisions of insurance for each insured crop.

Crop year. The period of time within which the insured crop is normally grown and designated by the calendar year in which the crop is normally harvested.

Delinquent debt. Any administrative fees or premiums for insurance issued under the authority of the Act, and the interest on those amounts, if applicable, that are not postmarked or received by us or our agent on or before the termination date unless you have entered into an agreement acceptable to us to pay such amounts or have filed for bankruptcy on or before the termination date;

any other amounts due us for insurance issued under the authority of the Act (including, but not limited to, indemnities found not to have been earned or that were overpaid), and the interest on such amounts, if applicable, which are not postmarked or received by us or our agent by the due date specified in the notice to you of the amount due; or any amounts due under an agreement with you to pay the debt, which are not postmarked or received by us or our agent by the due dates specified in such agreement.

Dollar amount of protection per acre. The percentage of coverage selected by you multiplied by the maximum protection per acre specified in the actuarial documents for the crop, practice, and type. The dollar amount of protection per acre is shown on your Summary of Protection.

Double crop. Producing two or more crops for harvest on the same acreage in the same crop year.

Expected county yield. The yield contained in the actuarial documents, on which your coverage for the crop year is based. This yield is determined using historical NASS county average yields, as adjusted by FCIC.

FCIC. The Federal Crop Insurance Corporation, a wholly owned corporation within USDA.

First insured crop. With respect to a single crop year and any specific crop acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Act. For example, if winter wheat that is not insured is planted on acreage that is later planted to soybeans that are insured, the first insured crop would be soybeans. If the winter wheat was insured, it would be the first insured crop.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Generally recognized. When agricultural experts or the organic agricultural industry, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity.

Good farming practices. The production methods utilized to produce the insured crop and allow it to make normal progress toward maturity, which are: (1) For conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by the organic agricultural industry for the area or contained in the organic plan that is in accordance with the National Organic Program published in 7 CFR part 205. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be "good farming practices."

GRP. Group Risk Plan of Insurance.

Household. A domestic establishment including the members of a family (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to be family members) and others who live under the same roof.

Insurable loss. Damage for which coverage is provided under the terms of your policy, and for which you accept an indemnity payment.

Insurance provider. The FSA or a private insurance company approved by FCIC which provides crop insurance coverage to producers participating in any Federal crop insurance program administered under the Act.

Limited resource farmer. A person with:

(1) Direct or indirect gross farm sales not more than \$100,000.00 in each of the previous two years (to be increased starting in fiscal year 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by NASS); and

(2) A total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

Maximum protection per acre. The highest amount of protection specified in the actuarial documents.

MPCI. Multiple peril crop insurance, an insurance product based on an individual yield or amount of insurance.

NASS. National Agricultural Statistics Service, an agency within USDA, or its successor, that publishes the official United States Government yield estimates.

Net acres. The planted acreage of the insured crop multiplied by your share.

Offset. The act of deducting one amount from another amount.

Organic agricultural industry. Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative State Research, Education and Extension Service, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

Organic farming practice. A system of plant production practices approved by a certifying agent in accordance with 7 CFR part 205.

Payment yield. The yield determined by FCIC based on NASS yields for each insurable crop's type and practice, as adjusted by FCIC, and used to determine whether an indemnity will be due.

Person. An individual, partnership, association, corporation, estate, trust, or other

legal entity, and wherever applicable, a state or a political subdivision or agency of a state.

Replanted crop. The same agricultural commodity replanted on the same acreage as the first insured crop for harvest in the same crop year if the replanting is specifically made optional by the policy and you elect to replant the crop and insure it under the policy covering the first insured crop, or replanting is required by the policy.

Sales closing date. The date contained in the Special Provisions by which an application must be filed. The last date by which you may change your crop insurance coverage for a crop year.

Second crop. With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. A cover crop, planted after a first insured crop and planted for the purpose of haying, grazing or otherwise harvesting in any manner or that is hayed or grazed during the crop year, or that is otherwise harvested is considered to be a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered as planted for the purpose of haying, grazing or otherwise harvesting. A crop meeting the conditions stated herein will be considered to be a second crop regardless of whether or not it is insured.

Share. Your percentage of interest in the insured crop, as an owner, operator, or tenant at the time insurance attaches. Premium will be determined on your share as of the acreage reporting date. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the acreage reporting date or on the date of harvest, whichever is less.

Special provisions. The part of the policy that contains specific provisions of insurance for each crop that may vary by geographic area.

Subsidy. The portion of your premium, shown on the actuarial documents, that FCIC will pay in accordance with the Act.

Substantial beneficial interest. An interest held by any person of at least 10 percent in you. The spouse of any individual applicant or individual insured will be considered to have a substantial beneficial interest in the applicant or insured unless the spouses can prove they are legally separated or otherwise legally separate under state law. Any child of an individual applicant or individual insured will not be considered to have a substantial beneficial interest in the applicant or insured unless the child has a separate legal interest in such person. For example,

there are two partnerships that each have a 50 percent interest in you and each partnership is made up of two individuals, each with a 50 percent share in the partnership. In this case, each individual would be considered to have a 25 percent interest in you, and both the partnerships and the individuals would have a substantial beneficial interest in you (The spouses of the individuals would not be considered to have a substantial beneficial interest unless the spouse was one of the individuals that made up the partnership). However, if each partnership is made up of six individuals with equal interests, then each would only have an 8.33 percent interest in you and although the partnership would still have a substantial beneficial interest in you, the individuals would not for the purposes of reporting in section 18.

Summary of protection. Our statement to you of the crop insured, dollar amount of protection per acre, premiums, and other information obtained from your accepted application, acreage report, and the actuarial documents.

Sustainable farming practice. A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop and is generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

Termination date. The calendar date contained in the Crop Provisions upon which insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium and administrative fees.

Trigger yield. The result of multiplying the expected county yield by the coverage level percentage chosen by you. When the payment yield falls below the trigger yield, an indemnity is due.

Type. Plants of the insured crop having common traits or characteristics that distinguish them as a group or class, and which are designated in the actuarial documents.

USDA. United States Department of Agriculture.

2. Insured Crop

The insured crop will be the crop shown on your accepted application, as specified in the applicable Crop Provisions, and must be grown on insurable acres.

3. Insured and Insurable Acreage

(a) The insurable acreage is all of the acreage of the insured crop for which premium rates are provided by the actuarial documents and in which you have a share and which is in the county listed in your accepted application. The dollar amount of protection per acre, amount of premium, and indemnity will be calculated separately for each county, type, and practice.

(b) Only the acreage seeded to the insured crop on or before the acreage reporting date (unless otherwise provided in the Crop Provisions) and physically located in the county listed on your accepted application will be insured. Crops grown on acreage physically located in another county must be reported and insured separately.

(c) We will not insure any acreage:

(1) Where the crop was destroyed or put to another use during the crop year for the purpose of conforming with, or obtaining a payment under, any other program administered by the USDA;

(2) Where you have failed to follow good farming practices for the insured crop; or

(i) Planted to a type, class or variety not generally recognized for the area; or

(ii) Where the conditions under which the crop is planted are not generally recognized for the area (For example, where agricultural experts determine that planting a non-irrigated corn crop after a failed small grain crop on the same acreage in the same crop year is not appropriate for the area);

(3) Of a second crop, if you elect not to insure such acreage when an indemnity for a first insured crop may be subject to reduction in accordance with the provisions of section 21 and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage. This election must be made for all first insured crop acreage that may be subject to an indemnity reduction if the first insured crop is insured under this policy, or on a first insured crop unit basis if the first insured crop is not insured under this policy. For example, if the first insured crop under this policy consists of 40 acres, or the first insured crop unit insured under another policy contains 40 planted acres, then no second crop can be insured on any of the 40 acres. In this case:

(i) If the first insured crop is insured under this policy, you must provide written notice to us of your election not to insure acreage of a second crop by the acreage reporting date for the second crop if it is insured under this policy, or before planting the second crop if it is insured under any other policy, or, if the first insured crop is not insured under this policy, at the time the first insured crop acreage is released by us (if no acreage in the first insured crop unit is released, this election must be made by the earlier of the acreage reporting date for the second crop or when you sign the claim for the first insured crop), and if you fail to provide such notice, the second crop acreage will be insured in accordance with applicable policy provisions and you must repay any overpaid indemnity for the first insured crop;

(ii) In the event a second crop is planted and insured with a different insurance provider, or planted and insured by a different

person, you must provide written notice to each insurance provider that a second crop was planted on acreage on which you had a first insured crop; and

(iii) You must report the crop acreage that will not be insured on the applicable acreage report; or

(4) Of a crop planted following a second crop or following an insured crop that is prevented from being planted after a first insured crop, unless it is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant three or more crops for harvest on the same acreage in the same crop year, and additional coverage insurance provided under the authority of the Act is offered for the third or subsequent crop in the same crop year. Insurance will only be provided for a third or subsequent crop as follows:

(i) You must provide records acceptable to us that show:

(A) You have produced and harvested the insured crop following two other crops harvested on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

(B) The applicable acreage has had three or more crops produced and harvested on it in at least two of the last four years in which the insured crop was grown on it; and

(ii) The amount of insurable acreage will not exceed 100 percent of the greatest number of acres for which you provide the records required in section 3(c)(4)(i)(A) or (B).

4. Policy Protection

(a) For catastrophic risk protection GRP policies, the dollar amount of protection per acre will be 45 percent of the maximum protection per acre specified on the actuarial documents for each insured crop, practice, and type. For additional coverage GRP policies, you may select any dollar amount of protection from 60 percent through 100 percent of the maximum protection per acre shown on the actuarial documents for the crop, practice, and type.

(b) The dollar amount of protection per acre, multiplied by your net insured acreage, is your policy protection for each insured crop, practice, and type specified in the actuarial documents.

(c) All yields are based on NASS determinations, and such determinations for the county will be conclusively presumed to be accurate.

5. Coverage Levels

(a) For catastrophic risk protection GRP policies, the coverage level is shown on the actuarial documents for each insured crop, practice, and type. For additional coverage GRP policies, you may select any percentage

of coverage shown on the actuarial documents for the crop, practice, and type.

(b) Your coverage level multiplied by the expected county yield shown on the actuarial documents is your trigger yield. If the payment yield published by FCIC for the insured crop, practice, and type for the insured crop year falls below your trigger yield, you will receive an indemnity payment.

(c) You may change the coverage level or amount of protection for each insured crop on or before the sales closing date. Changes must be in writing and received by us by the sales closing date.

6. Payment Calculation Factor

Your payment calculation factor will be $((\text{your trigger yield} - \text{payment yield}) \div \text{your trigger yield})$ for the purposes of calculating an indemnity payment.

7. Report of Acreage and Share

(a) You must report on our form all acreage for each insured crop in which you have a share (insurable and not insured) by practice and type specified in the actuarial documents in each county listed on your accepted application. This report must be submitted each year on or before the acreage reporting date for the insured crop contained in the actuarial documents. If you do not submit an acreage report by the acreage reporting date, we will determine your acreage and share or deny liability on the policy.

(b) We will not insure any acreage of the insured crop planted after the acreage reporting date, unless otherwise provided in the Crop Provisions.

(c) The premium amount and payment of an indemnity will be based on your insurable acreage on the acreage reporting date subject to section 7(d).

(d) You must provide all required reports and you are responsible for the accuracy of all information contained in those reports. You should verify the information on all such reports prior to submitting them to us.

(1) If you submit information on any report that is different than what is determined to be correct and such information results in:

(i) A lower amount of policy protection than the correct amount, the amount of policy protection will be reduced to an amount consistent with the reported information; or

(ii) A higher amount of policy protection than the correct amount, the information contained in the acreage report will be revised to be consistent with the correct information.

(2) In addition to the other adjustments specified in section 7(d)(1), if you misreport any information that results in an amount of policy protection greater than 110.0 percent or lower than 90.0 percent of the correct amount of policy protection, any indemnity

will be based on the amount of policy protection determined in accordance with section 7(d)(1)(i) or (ii) and will be reduced in an amount proportionate with the amount of policy protection that is misreported in excess of the tolerances stated in this paragraph (For example, if the correct amount of policy protection is determined to be \$100.00, but you reported a policy protection amount of \$120.00, any indemnity will be reduced by 10.0 percent ($\$120.00 / \$100.00 = 1.20$, and $1.20 - 1.10 = 0.10$)).

(e) If you request an acreage measurement prior to the acreage reporting date and submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date, you must provide the measurement to us, we will revise your acreage report if there is a discrepancy, and no indemnity will be paid until the acreage measurement has been received by us (Failure to provide the measurement to us will result in the application of section 7(d) if the estimated acreage is not correct, and estimated acreage under this paragraph will no longer be accepted for any subsequent acreage report).

(f) If there is an irreconcilable difference between:

(1) The acreage measured by FSA or a measuring service and our on-farm measurement, our on-farm measurement will be used; or

(2) The acreage measured by a measuring service, other than our on-farm measurement, and FSA, the FSA measurement will be used.

(g) Information on the initial acreage report will not be considered misreported for the purposes of section 7(d) if the acreage report is revised:

(1) In accordance with section 7(e) or (f);

(2) Because information is clearly transposed;

(3) When you provide adequate evidence that we or someone from USDA have committed an error regarding the information; or

(4) As expressly permitted by the policy.

(h) If we discover you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years substantiating your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense. If the correction of any misreported information would affect an indemnity that was paid in a prior crop year, such claim will be adjusted and you will be required to repay any overpaid amounts.

(i) You may insure only your share of the crop, which includes any share of your spouse and dependent children unless it is demonstrated to our satisfaction, prior to the sales closing date, that you and your spouse maintain completely separate farm-

ing operations and that each spouse is the operator of his or her own separate operation. Any commingling of any part of the operations will cause shares of you and your spouse to be combined.

8. Administrative Fees and Annual Premium

(a) If you obtain a catastrophic risk protection GRP policy, you will pay an administrative fee, unless otherwise specified in 7 CFR part 400:

(1) Of \$100 per crop per county;

(2) Payable to the insurance provider on the billing date for the crop.

(b) If you obtain an additional coverage GRP policy, you will pay an administrative fee:

(1) Of \$30 per crop per county;

(2) Payable to the insurance provider on the billing date for the crop.

(c) The administrative fee will be waived if you request it and:

(1) You qualify as a limited resource farmer; or

(2) You were insured prior to the 2005 crop year or for the 2005 crop year and your administrative fee was waived for one or more of those crop years because you qualified as a limited resource farmer under a policy definition previously in effect, and you remain qualified as a limited resource farmer under the definition that was in effect at the time the administrative fee was waived.

(d) For additional coverage GRP policies, your premium is determined by multiplying your policy protection by the premium rate per hundred dollars of protection for your coverage level contained in the actuarial documents, by 0.01, and subtracting the applicable subsidy.

(e) For catastrophic risk protection and additional coverage GRP policies, payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop (if you falsely file a zero acreage report you may be subject to criminal and administrative sanctions).

(f) The annual premium is earned and payable at the time the insured crop is planted. For each insured crop, you will be billed for premium and the administrative fee not earlier than the billing date specified in the Special Provisions. Premium, administrative fee, and any other amount owed us is due on the billing date and interest will accrue if the premium, administrative fee, or any other amount owed is not received by us before the first day of the month following the premium billing date.

(g) If the amount of premium (gross premium less premium subsidy paid on your behalf by FCIC) and administrative fee you are required to pay for any acreage exceeds the amount of protection for the acreage, coverage for those acres will not be provided (no premium or administrative fee will be due

and no indemnity will be paid for such acreage).

9. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement or for renewal of any written agreement no later than the sales closing date, unless you demonstrate your physical inability to submit the request prior to the sales closing date (For example, you have been hospitalized or a blizzard has made it impossible to submit the written agreement request in person or by mail);

(b) The application for written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved by FCIC, the written agreement will include all variable terms of the contract, including, but not limited to, crop practice, and type or variety;

(d) Each written agreement will only be valid for the number of crop years specified in the written agreement and a multi-year written agreement;

(1) Will only apply for any particular crop year designated in the written agreement if all terms and conditions in the written agreement are still applicable for the crop year and the conditions under which the written agreement has been provided have not changed prior to the beginning of the crop year (If conditions change during or prior to a crop year, the written agreement will not be effective for that crop year but may still be effective for a subsequent crop year if conditions under which the written agreement has been provided exist for such year);

(2) May be canceled in writing by:

(i) FCIC not less than 30 days before the cancellation date if it discovers that any term or condition of the written agreement, including the premium rate, is not appropriate for the crop; or

(ii) You or us on or before the cancellation date;

(3) That is not renewed in writing after it expires, is not applicable for a crop year, or is canceled, then insurance coverage will be in accordance with the terms and conditions stated in this policy, without regard to the written agreement; and

(4) Will be automatically cancelled if you transfer your policy to another insurance provider (No notice will be provided to you and for any subsequent crop year, for a written agreement to be effective, you must timely request renewal of the written agreement in accordance with this section);

(e) A request for any written agreement must contain:

(1) A completed "Request for Actuarial Change" form;

(2) Evidence from agricultural experts or the organic agricultural industry, as applicable, that the crop can be produced in the area if the request is to provide insurance for practices, types, or varieties that are not insurable, unless we are notified in writing by FCIC that such evidence is not required;

(3) The legal description of the land (in areas where legal descriptions are available), FSA Farm Serial Number including tract number, and a FSA aerial photograph, acceptable Geographic Information System or Global Positioning System maps, or other legible maps delineating field boundaries where you intend to plant the crop for which insurance is requested; and

(4) Such other information as specified in the Special Provisions or required by FCIC;

(f) A request for written agreement will not be accepted if:

(1) The request is submitted to us after the deadline contained in section 9(a);

(2) All the information required in section 9(e) is not submitted to us with the request for a written agreement (The request for a written agreement may be accepted if any missing information is available from other acceptable sources); or

(3) The request is to add land or crops to an existing written agreement or to add land or crops to a request for a written agreement and the request is not submitted by the deadlines specified in section 9(a);

(g) A request for a written agreement will be denied if:

(1) FCIC determines the risk is excessive;

(2) There is not adequate information available to establish an actuarially sound premium rate and insurance coverage for the crop and acreage; or

(3) Agricultural experts or the organic agricultural industry determines the crop practices, types, or varieties are not generally recognized for the county;

(h) A written agreement will be denied unless FCIC approves the written agreement and the original written agreement is signed by you and sent to us not later than the expiration date;

(i) With respect to your and our ability to reject an offer for a written agreement:

(1) When a single Request for Actuarial Change form is submitted, regardless of how many requests for changes are contained on the form, you and we can only accept or reject the written agreement in its entirety (you cannot reject specific terms of the written agreement and accept others);

(2) When multiple Request for Actuarial Change forms are submitted, regardless of when the forms are submitted, for the same condition, all these forms may be treated as one request and you and we will only have

§ 407.9

7 CFR Ch. IV (1-1-06 Edition)

the option of accepting or rejecting the written agreement in its entirety (you cannot reject specific terms of the written agreement and accept others);

(3) When multiple Request for Actuarial Change forms are submitted, regardless of when the forms are submitted, for the different conditions or for different crops, separate agreements may be issued and you and we will have the option to accept or reject each written agreement; and

(4) If we reject an offer for a written agreement approved by FCIC, you may seek arbitration or mediation of our decision to reject the offer in accordance with section 16;

(j) Any information that is submitted by you after the applicable deadlines in section 9(a) will not be considered, unless such information is specifically requested in accordance with section 9(e)(4);

(k) If the written agreement or the policy is canceled for any reason, or the period for which an existing written agreement is in effect ends, a request for renewal of the written agreement must contain all the information required by this section and be submitted in accordance with section 9(a), unless otherwise specified by FCIC; and

(l) If a request for a written agreement is not approved by FCIC, a request for a written agreement for any subsequent crop year that fails to address the stated basis for the denial will not be accepted (If the request for a written agreement contains the same information that was previously rejected or denied, you will not have any right to arbitrate, mediate or appeal the non-acceptance of your request).

10. Access to Insured Crop and Record Retention

(a) We, and any employee of USDA authorized to investigate or review any matter relating to crop insurance, have the right to examine the insured crop, any records relating to the crop and this insurance, and any records regarding mediation, arbitration or litigation involving the insured crop, at any location where such crop or records may be found or maintained, as often as reasonably required during the record retention period.

(b) You must retain, and provide upon our request, or the request of any employee of USDA authorized to investigate or review any matter relating to crop insurance, complete records pertaining to the planting of the insured crop and your net acres for a period of three years after the end of the crop year or three years after the date of final payment of the indemnity, whichever is later. This requirement also applies to all such records for acreage that is not insured.

(c) We, or any employee of USDA authorized to investigate or review any matter relating to crop insurance, may extend the record retention period beyond three years

by notifying you of such extension in writing.

(d) By signing the application for insurance authorized under the Act or by continuing insurance for which you have previously applied, you authorize us or USDA, or any person acting for us or USDA authorized to investigate or review any matter relating to crop insurance, to obtain records relating to the planting, replanting, inputs, production, harvesting, and disposition of the insured crop from any person who may have custody of such records, including but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist in obtaining all records we or any employee of USDA authorized to investigate or review any matter relating to crop insurance request from third parties.

(e) Failure to provide access to the insured crop or the farm, maintain or provide any required records, authorize access to the records maintained by third parties, or assist in obtaining all such records will result in a determination that no indemnity is due for the crop year in which such failure occurred.

11. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for payment of the premium. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

12. Assignment of Indemnity

You may assign to another person your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us.

13. Other Insurance.

Nothing in this section prevents you from obtaining other insurance not authorized under the Act. However, unless specifically required by policy provisions, you must not obtain any other crop insurance authorized under the Act on your share of the insured crop. If you cannot demonstrate that you did not intend to have more than one policy in effect, you may be subject to the consequences authorized under this policy, the Act, or any other applicable statute. If you can demonstrate that you did not intend to have more than one policy in effect (For example, an application to transfer your policy

Federal Crop Insurance Corporation, USDA

§ 407.9

or written notification to an insurance provider that states you want to purchase, or transfer, insurance and you want any other policies for the crop canceled would demonstrate you did not intend to have duplicate policies), and:

(a) One is an additional coverage policy and the other is a Catastrophic Risk Protection policy:

(1) The additional coverage policy will apply if both policies are with the same insurance provider or, if not, both insurance providers agree; or

(2) The policy with the earliest date of application will be in force if both insurance providers do not agree; or

(b) Both are additional coverage policies or both are Catastrophic Risk Protection policies, the policy with the earliest date of application will be in force and the other policy will be void, unless both policies are with:

(1) The same insurance provider and the insurance provider agrees otherwise; or

(2) Different insurance providers and both insurance providers agree otherwise.

14. [Reserved]

[FCIC policy]

15. Restrictions, Limitations, and Amounts Due Us

(a) We may restrict the amount of acreage we will insure to the amount allowed under any acreage limitation program established by USDA.

(b) Violation of Federal statutes including, but not limited to, the Act; the controlled substance provisions of the Food Security Act of 1985; the Food, Agriculture, Conservation, and Trade Act of 1990; and the Omnibus Budget Reconciliation Act of 1993, and any regulation promulgated thereunder, will result in cancellation, termination, or voidance of your crop insurance contract. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less an amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

(c) Our maximum liability under this policy will be limited to the policy protection specified in section 4 of this policy.

(d) We will pay simple interest computed on the net indemnity ultimately found to be due by us or determined by a final judgment of a court of competent jurisdiction or a final administrative determination from, and including, the 61st day after the date we receive the NASS county yield estimates for the insured crop year. Interest will be paid only if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indem-

nity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611 *et seq.*), and published in the FEDERAL REGISTER.

(e) Any amount illegally or erroneously paid to you or that is owed to us but is delinquent may be recovered by us through offset by deducting it from any loan or payment due you under any Act of Congress or program administered by any United States Government Agency, or by other collection action.

(f) Interest will accrue at the rate not to exceed 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium or administrative fee balance. For the purpose of premium and administrative fee amounts due us, interest will begin to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(g) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned:

(1) Interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount;

(2) Amounts found due under this paragraph will not be charged interest if payment is made in full within 30 days of issuance of the notice by us;

(3) The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us;

(4) Penalties and interest will be charged in accordance with 31 U.S.C. 3717 and 4 CFR part 102; and

(5) The penalty for accounts more than 90 days delinquent is an additional 6 percent per annum.

(h) Interest on any amount due us found to have been received by you because of fraud, misrepresentation, or presentation by you of a false claim will start on the date you received the amount with the additional 6 percent penalty beginning on the 31st day after the notice of amount due is issued to you. This interest is in addition to any other amount found to be due under any other Federal criminal or civil statute.

(i) If we determine that it is necessary to contract with a collection agency, refer the debt to governmental collection centers, the Department of Treasury Offset Program, or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(j) All amounts paid by you will be applied first to expenses of collection if any, second to reduction of any penalties which may have been assessed, then to reduction of accrued interest, and finally, to reduction of the principal balance.

[Reinsured policy]

§ 407.9

7 CFR Ch. IV (1–1–06 Edition)

15. Restrictions, Limitations, and Amounts Due Us

(a) We may restrict the amount of acreage we will insure to the amount allowed under any acreage limitation program established by USDA.

(b) Violation of Federal statutes including, but not limited to, the Act; the controlled substance provisions of the Food Security Act of 1985; the Food, Agriculture, Conservation, and Trade Act of 1990; and the Omnibus Budget Reconciliation Act of 1993, and any regulation promulgated thereunder, will result in cancellation, termination, or voidance of your crop insurance contract. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

(c) Our maximum liability under this policy will be limited to the policy protection specified in section 4 of this policy.

(d) Interest will accrue at the rate not to exceed 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium or administrative fee balance. For the purpose of premium and administrative fee amounts due us, interest will begin to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(e) For the purpose of any amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph will not be charged interest if payment in full is made within 30 days of issuance of notice by us. The amount will be considered delinquent if not paid in full within 30 days of the date the notice is issued by us.

(f) All amounts paid will be applied first to expenses of collection (see subsection (g) of this section) if any, second to reduction of accrued interest, and then to reduction of the principal balance.

(g) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(h) A portion of the amount paid to you to which you were not entitled may be collected through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

(i) We will pay simple interest computed on the net indemnity ultimately found to be due by us or determined by a final judgment of a court of competent jurisdiction or a final administrative determination from, and including, the 61st day after the date we receive the NASS county yield estimates for

the insured crop year. Interest will be paid only if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611 *et seq.*), and published in the FEDERAL REGISTER.

[FCIC policy]

16. Appeals, Administrative and Judicial Review

(a) All determinations required by the policy will be made by us.

(b) If you disagree with our determinations, you may:

(1) Except for determinations specified in section 16(b)(2), obtain an administrative review in accordance with 7 CFR part 400, subpart J or appeal in accordance with 7 CFR part 11; or

(2) For determinations regarding whether you have used good farming practices, request reconsideration in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J.

(c) If you fail to exhaust your administrative remedies under 7 CFR part 11 or the reconsideration process for determinations of good farming practices described in section 16(b)(2), as applicable, you will not be able to resolve the dispute through judicial review.

(d) If reconsideration for good farming practices under 7 CFR part 400, subpart J or appeal under 7 CFR part 11 has been initiated within the time frames specified in those sections and judicial review is sought, any suit against us must be:

(1) Filed not later than one year after the date of the decision rendered in the reconsideration process for good farming practices or administrative review process under 7 CFR part 11; and

(2) Brought in the United States district court for the district in which the insured farm involved in the decision is located.

(e) You may only recover contractual damages from us. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from us in administrative review, appeal or litigation.

[Reinsured policy]

16. Mediation, Arbitration, Appeals, and Administrative and Judicial Review

(a) If you and we fail to agree on any determination made by us except those specified in section 16(d), the disagreement may be resolved through mediation in accordance with section 16(g). If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must

be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), except as provided in sections 16(c) and (f), and unless rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

(1) All disputes involving determinations made by us, except those specified in section 16(d), are subject to mediation or arbitration. However, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, either you or we must obtain an interpretation from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC.

(i) Any interpretation by FCIC will be binding in any mediation or arbitration.

(ii) Failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.

(iii) An interpretation by FCIC of a policy provision is considered a rule of general applicability and is not appealable. If you disagree with an interpretation of a policy provision by FCIC, you must obtain a Director's review from the National Appeals Division in accordance with 7 CFR 11.6 before obtaining judicial review in accordance with subsection (e).

(iv) An interpretation by FCIC of a procedure may be appealed to the National Appeals Division in accordance with 7 CFR part 11.

(2) Unless the dispute is resolved through mediation, the arbitrator must provide to you and us a written statement describing the issues in dispute, the factual findings, the determinations and the amount and basis for any award and breakdown by claim for any award. The statement must also include any amounts awarded for interest. Failure of the arbitrator to provide such written statement will result in the nullification of all determinations of the arbitrator. All agreements reached through settlement, including those resulting from mediation, must be in writing and contain at a minimum a statement of the issues in dispute and the amount of the settlement.

(b) Regardless of whether mediation is elected:

(1) The initiation of arbitration proceedings must occur within one year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;

(2) If you fail to initiate arbitration in accordance with section 16(b)(1) and complete the process, you will not be able to resolve the dispute through judicial review;

(3) If arbitration has been initiated in accordance with section 16(b)(1) and completed, and judicial review is sought, suit must be filed not later than one year after the date the arbitration decision was rendered; and

(4) In any suit, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, an interpretation must be obtained from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC. Such interpretation will be binding.

(c) Any decision rendered in arbitration is binding on you and us unless judicial review is sought in accordance with section 16(b)(3). Notwithstanding any provision in the rules of the AAA, you and we have the right to judicial review of any decision rendered in arbitration.

(d) If you do not agree with any determination made by us or FCIC regarding whether you have used a good farming practice, you may request reconsideration by FCIC of this determination in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J (reconsideration).

(1) You must complete reconsideration before filing suit against FCIC and any such suit must be brought in the United States district court for the district in which the insured farm is located.

(2) Suit must be filed not later than one year after the date of the decision rendered in the reconsideration.

(3) You cannot sue us for determinations of whether good farming practices were used by you.

(e) Except as provided in section 16(d), if you disagree with any other determination made by FCIC, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal). If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC not later than one year after the date of the decision rendered in such appeal. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from FCIC.

(f) In any mediation, arbitration, appeal, administrative review, reconsideration or judicial process, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV, including the provisions of 7 CFR part 400, subpart P, are binding. Conflicts between this policy and any state or local laws will be resolved in accordance with section 31. If there are conflicts between any rules of the AAA and the provisions of your policy, the provisions of your policy will control.

(g) To resolve any dispute through mediation, you and we must both:

- (1) Agree to mediate the dispute;
- (2) Agree on a mediator; and
- (3) Be present, or have a designated representative who has authority to settle the case present, at the mediation.

(h) Except as provided in section 16(i), no award or settlement in mediation, arbitration, appeal, administrative review or reconsideration process or judicial review can exceed the amount of liability established or which should have been established under the policy, except for interest awarded in accordance with section 15(i).

(i) In a judicial review only, you may recover attorneys fees or other expenses, or any punitive, compensatory or any other damages from us only if you obtain a determination from FCIC that we, our agent or loss adjuster failed to comply with the terms of this policy or procedures issued by FCIC and such failure resulted in you receiving a payment in an amount that is less than the amount to which you were entitled. Requests for such a determination should be addressed to the following: USDA/RMA/Deputy Administrator of Compliance/Stop 0806, 1400 Independence Avenue, SW., Washington, DC 20250-0806.

(j) If FCIC elects to participate in the adjustment of your claim, or modifies, revises or corrects your claim, prior to payment, you may not bring an arbitration, mediation or litigation action against us. You must request administrative review or appeal in accordance with section 16(e).

17. Holidays and Weekends

If any date specified in this program falls on Saturday, Sunday, or a legal Federal holiday, that date will be extended to the next business day.

18. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy or by us.

(b) Your application for insurance must contain your social security number (SSN) if you are an individual or employer identification number (EIN) if you are a person other than an individual, and all SSNs and EINs, as applicable, of all persons with a substantial beneficial interest in you, the coverage level, price election, crop, type, variety, or class, plan of insurance, and any other material information required on the application to insure the crop. If you or someone with a substantial beneficial interest is not legally required to have a SSN or EIN, you must request and receive an identification number

for the purposes of this policy from us or the Internal Revenue Service (IRS) if such identification number is available from the IRS. If any of the information regarding persons with a substantial beneficial interest changes during the crop year, you must revise your application by the next sales closing date applicable under your policy to reflect the correct information.

(1) Applications that do not contain your SSN, EIN or identification number, or any of the other information required in section 18(b) are not acceptable and insurance will not be provided (Except if you fail to report the SSNs, EINs or identification numbers of persons with a substantial beneficial interest in you, the provisions in section 18(b)(2) will apply);

(2) If the application does not contain the SSNs, EINs or identification numbers of all persons with a substantial beneficial interest in you, you fail to revise your application in accordance with section 18(b), or the reported SSNs, EINs or identification numbers are incorrect and the incorrect SSN, EIN or identification number has not been corrected by the acreage reporting date, and:

(i) Such persons are eligible for insurance, the amount of coverage for all crops included on this application will be reduced proportionately by the percentage interest in you of such persons, you must repay the amount of indemnity that is proportionate to the interest of the persons whose SSN, EIN or identification number was unreported or incorrect for such crops, and your premium will be reduced commensurately; or

(ii) Such persons are not eligible for insurance, except as provided in section 18(b)(3), the policy is void and no indemnity will be owed for any crop included on this application, and you must repay any indemnity that may have been paid for such crops. If previously paid, the balance of any premium and any administrative fees will be returned to you, less twenty percent of the premium that would otherwise be due from you for such crops. If not previously paid, no premium or administrative fees will be due for such crops.

(3) The consequences described in section 18(b)(2)(ii) will not apply if you have included an ineligible person's SSN, EIN or identification number on your application and do not include the ineligible person's share on the acreage report.

(c) After acceptance of the application, you may not cancel this policy for the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(d) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the Crop Provisions.

(e) Any amount due to us for any policy authorized under the Act will be offset from any indemnity due you for this or any other crop insured with us.

(1) Even if your claim has not yet been paid, you must still pay the premium and administrative fee on or before the termination date for you to remain eligible for insurance.

(2) If we offset any amount due us from an indemnity owed to you, the date of payment for the purpose of determining whether you have a delinquent debt will be the date FCIC publishes the payment yield for the applicable crop year.

(f) A delinquent debt for any policy will make you ineligible to obtain crop insurance authorized under the Act for any subsequent crop year and result in termination of all policies in accordance with section 18(f)(2).

(1) With respect to ineligibility:

(i) Ineligibility for crop insurance will be effective on:

(A) The date that a policy was terminated in accordance with section 18(f)(2) for the crop for which you failed to pay premium, an administrative fee, or any related interest owed, as applicable;

(B) The payment due date contained in any notification of indebtedness for any overpaid indemnity, if you fail to pay the amount owed, including any related interest owed, as applicable, by such due date;

(C) The termination date for the crop year prior to the crop year in which a scheduled payment is due under a payment agreement if you fail to pay the amount owed by any payment date in any agreement to pay the debt; or

(D) The termination date the policy was or would have been terminated under sections 18(f)(2)(i)(A), (B) or (C) if your bankruptcy petition is dismissed before discharge.

(ii) If you are ineligible and a policy has been terminated in accordance with section 18(f)(2), you will not receive any indemnity, and such ineligibility and termination of the policy may affect your eligibility for benefits under other USDA programs. Any indemnity that may be owed for the policy before it has been terminated will remain owed to you, but may be offset in accordance with section 18(e), unless your policy was terminated in accordance with sections 18(f)(2)(i)(D) or (E).

(2) With respect to termination:

(i) Termination will be effective on:

(A) For a policy with unpaid administrative fees or premiums, the termination date immediately subsequent to the billing date for the crop year;

(B) For a policy with other amounts due, the termination date immediately following the date you have a delinquent debt;

(C) For each policy for which the termination date has passed before you become ineligible, the termination date immediately following the date you become ineligible;

(D) For execution of an agreement to pay any amounts owed and failure to make any scheduled payment, the termination date for the crop year prior to the crop year in which you failed to make the scheduled payment; or

(E) For dismissal of a bankruptcy petition before discharge, the termination date the policy was or would have been terminated under sections 18(f)(2)(i)(A), (B) or (C).

(ii) For all policies terminated under sections 18(f)(2)(i)(D) and (E), any indemnities paid subsequent to the termination date must be repaid.

(iii) Once the policy is terminated, it cannot be reinstated for the current crop year unless the termination was in error. Failure to timely pay because of illness, bad weather, or other such extenuating circumstances is not grounds for reinstatement in the current crop year.

(3) To regain eligibility, you must:

(i) Repay the delinquent debt in full;

(ii) Execute an agreement to pay any amounts owed and make payments in accordance with the agreement (We will not enter into an agreement with you to pay the amounts owed if you have previously failed to make a scheduled payment under the terms of any other agreement to pay with us or any other insurance provider); or

(iii) File a petition to have your debts discharged in bankruptcy (Dismissal of the bankruptcy petition before discharge will terminate all policies in effect retroactive to the date your policy would have been terminated in accordance with section 18(f)(2)(i));

(4) After you become eligible for crop insurance, if you want to obtain coverage for your crops, you must submit a new application on or before the sales closing date for the crop (Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment after the sales closing date, you cannot apply for insurance until the next crop year);

(5) For example, for the 2003 crop year, if crop A, with a termination date of October 31, 2003, and crop B, with a termination date of March 15, 2004, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 2003, and crop A's policy is terminated as of that date. Crop B's policy does not terminate until March 15, 2004, and an indemnity for the 2003 crop year may still be owed. If you enter an agreement to repay amounts owed on September 25, 2004, the earliest date by which you can obtain crop insurance for crop A is to apply for crop insurance by the October 31, 2004, sales closing date and for crop B is to apply for crop insurance by the March 15, 2005, sales closing date. If you fail to make a payment that was scheduled to be made on April 1, 2005, your policy will terminate as of October 31, 2004, for crop A, and March 15, 2005, for

§ 407.9

7 CFR Ch. IV (1–1–06 Edition)

crop B, and no indemnity will be due for that crop year for either crop. You will not be eligible to apply for crop insurance for any crop until after the amounts owed are paid in full or you file a petition to discharge the debt in bankruptcy.

(6) If you are determined to be ineligible under section 18(f), persons with a substantial beneficial interest in you may also be ineligible until you become eligible again.

(g) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after coverage begins for any crop year, the policy will continue in force through the crop year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. The premium will be deducted from the indemnity or collected from the estate. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

(h) We may cancel your policy if no premium is earned for 3 consecutive years.

(i) The cancellation and termination dates are contained in the Crop Provisions.

19. Contract Changes

(a) We may change any terms and conditions of this policy from year to year.

(b) Any changes in policy provisions, expected county yields, maximum amounts of protection, premium rates, and program dates (except as allowed herein) can be viewed on the RMA Web site at <http://www.rma.usda.gov/> or a successor Web site not later than the contract change date contained in the Crop Provisions. We may only revise this information after the contract change date to correct clear errors (For example, the maximum amount of protection was announced at \$2500.00 per acre instead of \$250.00 per acre).

(c) After the contract change date, all changes specified in section 19(b) will also be available upon request from your crop insurance agent. You will be provided, in writing, a copy of the changes to the Basic Provisions and Crop Provisions and a copy of the Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

20. Eligibility for Other Farm Program Benefits

To remain eligible for benefits under the Agriculture Marketing Transition Act, the conservation reserve program, or certain farm loans, you are required to obtain at least the catastrophic level of coverage for either GRP or any other plan of insurance that is available in the county, for all crops of economic significance, or execute a waiver of your rights to any emergency crop assistance on or before the sales closing date for the crop.

21. Indemnity and Premium Limitations.

(a) With respect to acreage where you are due a loss for your first insured crop in the crop year, except in the case of double cropping described in section 21(c):

(1) You may elect to not plant or to plant and not insure a second crop on the same acreage for harvest in the same crop year and collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop; or

(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year (you will pay the full premium and if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first insured crop;

(ii) Be responsible for a premium that is 35 percent of the premium that you would otherwise owe for the first insured crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 21(a)(2)(i); and

(B) Be responsible for the remainder of the premium for the first insured crop that you did not pay under section 21(a)(2)(ii).

(b) The reduction in the amount of indemnity and premium specified in section 21(a), as applicable, will apply:

(1) Notwithstanding the priority contained in the Agreement to Insure section, which states that the Crop Provisions have priority over the Basic Provisions when a conflict exists, to any premium owed or indemnity paid in accordance with the Crop Provisions, and any applicable endorsement.

(2) Even if another person plants the second crop on any acreage where the first insured crop was planted.

(3) If you fail to provide any records we require to determine whether an insurable loss occurred for the second crop.

(c) You may receive a full indemnity for a first insured crop when a second crop is

Federal Crop Insurance Corporation, USDA

§ 407.10

planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant two or more crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped; and

(4) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first insured crop was grown on it.

(d) The receipt of a full indemnity on both crops that are double cropped is limited to the number of acres for which you can demonstrate you have double cropped or that have been historically double cropped as specified in section 21(c).

An Example To Demonstrate How GRP Works

Producer A buys 90 percent coverage and selects \$160 protection per acre. Producer B buys 75 percent coverage and selects \$185 protection per acre. Both producers have 100 percent share and both plant 200 acres of a crop in the county. The expected county yield is 45 bushels per acre. The premium rate for 90 percent coverage is \$6.14 per hundred dollars of protection and the premium rate for 75 percent coverage is \$3.30 per hundred dollars of protection.

A's trigger yield is 40.5 bushels per acre ($90\% \times 45$), and the total premium due is \$1,965 ($\$160 \times \$6.14 \times 200 \text{ acres} \times 0.01$). Of that amount, FCIC pays \$614 ($200 \text{ acres} \times \text{the maximum subsidy of } \3.07 per acre). A's policy protection is \$32,000 ($\$160 \times 200 \text{ acres}$).

B's trigger yield is 33.8 bushels per acre ($75\% \text{ of } 45$), and the total premium due is \$1,221 ($\$185 \times \$3.30 \times 200 \text{ acres} \times 0.01$). Of that amount, FCIC pays \$442 ($200 \text{ acres} \times \text{the subsidy amount of } \2.21 per acre). B's policy protection is \$37,000 ($\$185 \times 200 \text{ acres}$).

Scenario 1 (likely)

FCIC issues a payment yield of 46 bushels per acre. This is above both producers' trigger yields, so no indemnity payment is made, even if one or both have individual yields that are below the trigger yield.

Scenario 2 (less likely)

FCIC issues a payment yield of 38 bushels per acre. A's payment calculation factor is

$0.062 ((40.5 - 38) \div 40.5)$. This number multiplied by the policy protection yields an indemnity payment of \$1,984 ($.062 \times \$32,000$). B's trigger yield is less than the payment yield, so no indemnity payment is made.

Scenario 3 (least likely)

FCIC issues a payment yield of 22 bushels per acre. A's payment calculation factor is $0.457 ((40.5 - 22) \div 40.5)$. The payment is \$14,624 ($0.457 \times \$32,000$). B's payment calculation factor is $0.349 ((33.8 - 22) \div 33.8)$, and the final indemnity payment is \$12,913 ($0.349 \times \$37,000$).

[64 FR 30219, June 7, 1999, as amended at 65 FR 40485, June 30, 2000; 68 FR 37721, June 25, 2003; 69 FR 48731, Aug. 10, 2004]

§ 407.10 Group risk plan for barley.

The provisions of the Group Risk Plan for Barley for the 2000 and succeeding crop years are as follows:

1. Definitions

Harvest. Combining or threshing the barley for grain.

NASS yield. The yield calculated by dividing the NASS estimate of the barley production in the county, by the NASS estimate of the acres of barley in the county, as specified in the actuarial documents. The actuarial documents will specify whether harvested or planted acreage is used to calculate the yield used to establish the expected county yield and calculate indemnities.

Planted acreage. Land in which the barley seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth, will also be considered planted.

2. Crop Insured

The insured crop will be all barley:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Planted with the intent to be harvested as grain; and

(d) Not planted into an established grass or legume, interplanted with another crop, or planted as a nurse crop, unless seeded at the normal rate and intended for harvest as grain.

3. Payment

(a) A payment will be made only if the payment yield for the insured crop year is less than your trigger yield.